IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

MONDAY, THE 18TH JUNE 2007 / 28TH JYAISHTA 1929

Crl.L.P..No. 258 of 2007()

PETITIONER/COMPLAINANT:

A. MUHAMMADUMMA,
THUNDILPUTHEN VEETTIL, MANAKKARA MURI,
SASTHAMCOTTAH, KOLLAM.

BY ADV. SRI.S.SANTHOSH KUMAR

RESPONDENTS: ACCUSED NOS.2 AND 3 & STATE:

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1. SHIBU, S/O. BADARUDHEEN,
PROPRIETOR OF SHIBU BAKERY, MANAKKARA MURI,
SASTHAMCOTTAH, KOLLAM.

2. ISMAIL KUNJU @ CHINNAPPA,
SAFEENA MANZIL, MANAKKARA MURI, SASTHAMCOTTAH,
KOLLAM.

3. THE STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

BY ADV. SRI.K.BABU THOMAS
R3-BY P.P.SRI.C.M. KAMAPPU

THIS CRIMINAL LEAVE PETITION HAVING COME UP FOR ADMISSION ON 18/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. THANKAPPAN, J.

CRL.L.P.NO.258 OF 2007

Dated this the 18th day of June, 2007.

O R D E R

This is an application for special leave to appeal filed by the petitioner/complainant in C.C.No.1355/2001 on the file of the Judicial Magistrate of First Class, Karunagappally. The case of the petitioner before the court was that on 5.2.1996 at about 10 p.m while she was returning to her home after offering Ramzan prayers and when she reached the public road situated near the Sasthamcotta village office, the 3rd accused - husband of the petitioner reached the place. Thereupon A2 came in a scooter and stopped near the petitioner. A1 who was the pillion rider hit on the right chest and right hand of the petitioner with a cycle chain and on receiving injuries she fell down. Thereafter she was taken to the hospital and the Sasthamcotta police had registered a crime on the statement of the petitioner. But as the police did not take any further action, a private complaint has been filed alleging the offences punishable under Sections 341 and 323 read with Section 34 of the I.P.C against the respondents/accused.

2. To prove the case against the respondents/accused, the petitioner/complainant herself was examined as PW1 and two other witnesses were also examined. Ext.P1 wound certificate was also produced as given by PW4 – the doctor, who examined the petitioner/complainant. After considering the case of the petitioner/complainant and on hearing the accused under Section 313 of the Code of Criminal Procedure, the trial court acquitted the accused against which the leave petition is attempted.

3. This Court heard the learned counsel appearing for the petitioner/complainant. The counsel appearing for the petitioner submits that the trial court misread the evidence of Pws 1 to 3, who were the injured and the occurrence witnesses. The counsel further submits that the trial court ought to have accepted the evidence of PW4 - the doctor who had issued Ext.P1 medical certificate that the injuries on the chest of the petitioner have already been noted by him. If so, the trial court ought to have found the respondents 1 and 2 guilty.

4. It is come out in evidence that A1 is no more and the 3rd accused is the husband of the petitioner. The evidence adduced by PW1 will not show that the petitioner/complainant was attacked either by A1 or any other accused as stated in the complaint. The

trial court also found that the evidence of Pws 2 and 3, who were examined as eye witnesses to the occurrence, did not support the case of the petitioner/complainant and their evidence is contradictory in nature. The trial court also found that the complaint was filed only after the expiry of more than one and a half years. It is also come out in evidence that a petition under Section 498 A has already been filed by the petitioner/complainant against the 3rd accused which was also dismissed. The trial court also found that as per the evidence given by PW4 - the doctor the injury noted in Ext.P1 wound certificate would not have been caused by beating with a cycle chain as alleged in the complaint.

In the above circumstances, this Court is of the view that no compelling circumstances are involved in the matter to interfere with the acquittal judgment passed by the court below. Unless and until compelling circumstances and reasons are there in re-appreciating the evidence, this Court is not expected to interfere with the judgment of the acquittal. Accordingly, the leave to appeal stands dismissed as merit less.

K. THANKAPPAN, JUDGE.

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